Written by **Bob Adelmann** on December 1, 2014

Warrantless Taking of Drivers' Blood Samples Ruled Unconstitutional

At about 2:00 a.m. on October 3, 2010, Missouri motorist Tyler McNeely was stopped by a highway patrolman for speeding and weaving. After failing several field sobriety tests, McNeely was asked to submit to a breathalyzer test, which he refused. He was immediately arrested and taken to a local hospital in handcuffs, where he was forced to submit to having blood drawn to check his blood alcohol level — all without a warrant. McNeely went to court claiming his Fourth Amendment rights were violated.

The Fourth Amendment says: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to searched, and the persons or things to be seized."

Upon appeal, his case was heard by the Supreme Court in April of 2013, which agreed that an involuntary draw of blood is a "search" under the terms of the Fourth Amendment, and therefore McNeely's rights under the Fourth Amendment had been violated.

McNeely's arrest occurred just months before U.S. Transportation Secretary Ray LaHood announced his department's new policy "urging" states to adopt his new "no-refusal" strategy to get drunks off the road. LaHood said at the time,

> Drunk driving remains a leading cause of death and injury on our roadways. I applaud the efforts of the law enforcement officials who have pioneered the "No Refusal" approach to get drunk drivers off our roads. And I urge other states to adopt this approach to make sure that drunk drivers can't skirt the law and are held accountable.

What LaHood was saying was that people exercising their Fourth Amendment rights against unreasonable searches and seizures without a warrant were "skirting" the law and needed to be reined in and punished. He noted proudly that nine states — Texas, Louisiana, Florida, Kansas, Missouri, Illinois, Utah, Idaho, and Arizona — had already adopted his "urging" and were systematically and willingly violating their citizens' rights under the excuse of removing drunks from roadways. Many of them set up checkpoints over "no-refusal" weekends to show their intent and determination.

Unfortunately, justice is often slow in declaring unconstitutional such breaches of precious rights and, even when those breaches are finally recognized, remedying them can be painfully slow.

In 2012, David Villarreal was pulled over in Nueces County, Texas, for a traffic violation. When he refused to take a breathalyzer test, the state's "no refusal" law kicked in and he was immediately arrested and taken to a local hospital against his will. A nurse drew a blood sample without a warrant,

with the arresting officer claiming that state law required the taking of either a breath sample or a blood sample from anyone previously convicted two or more times of driving while intoxicated.

Villarreal had two such convictions, one in 2001 and another one in 2005. The prosecutor threw the book at him, demanding that the judge sentence him to at least 25 years in jail. Villarreal's attorney, Fred Jimenez, appealed and the case finally arrived at the Texas Court of Criminal Appeals, the state's highest court for criminal cases. After reviewing the facts, the court explained its 5-4 decision the day before Thanksgiving:

> We hold that a nonconsensual search of a DWI suspect's blood conducted pursuant to the mandatory-blood-draw and implied-consent provisions in the [state's] Transportation Code, when undertaken in the absence of a warrant or any applicable exception to the warrant requirement, violates the Fourth Amendment.

Such a ruling should not even be necessary, says Mark Horne, the blogger at Political Outcast. The law should never have been adopted in the first place, despite the pleadings of LaHood: "If we have a right not to incriminate ourselves [under the Fifth Amendment] then how can exercising that right be the basis for a lawful warrant [under the Fourth]?"

The "no-refusal" law essentially forces drivers into giving up their Fifth Amendment rights in order to avoid the harsh implications of a law which violates the Fourth. Or, as Horne put it:

> The process is designed to force drivers into relenting to breath tests in order to avoid a potentially harsher penalty if they refuse to cooperate.
>
> Right. Because the Founding Fathers stood up and risked their lives for the right of the states to set up checkpoints to demand that people incriminate themselves or else face a warrant on that basis for a more invasive personal search.

Upon learning of the Texas court's decision last week, Villarreal's attorney said it's not going to end every state's "no-refusal" weekends. But it is a small victory in a big war, nevertheless:

> We're not going to see the end of no refusal weekends, but the procedure has changed. All [that the ruling] is, is a ruling that [police] cannot use the blood test that they obtained without a warrant. That's all it is.

It will likely increasingly encourage local law-enforcement departments' enthusiasm to set up "judges on call" to issue warrants while suspects are being driven to the police station or the hospital in order to paint the process with the color of respectability and legality. Defending the Fourth Amendment will require an increasing number of well-informed citizens knowing all their rights guaranteed in the Bill of Rights, and demanding that they be honored. Until that happens, however, states will continue to abrogate and ignore them, at the urging of the federal government.

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